

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

EUROPEAN COMMUNITY,

Plaintiff,

v.

RJR NABISCO, INC., *et al.*,

Defendants.

00 CV 6617 (NGG/VVP)

DEPARTMENT OF AMAZONAS, *et al.*,

Plaintiffs,

v.

PHILIP MORRIS COMPANIES INC., *et al.*,

Defendants.

00 CV 2881 (NGG/VVP)

00 CV 4530 (NGG/VVP)

00 CV 3857 (NGG/VVP)

(Consolidated)

**DEFENDANTS' REPLY TO THE OPPOSITION OF THE DEPARTMENTS
OF COLOMBIA TO DEFENDANTS' OBJECTIONS TO THE
MAGISTRATE JUDGE'S DENIAL OF THEIR APPLICATION
FOR DISCOVERY OF THE RETAINER AGREEMENTS
WITH THE COLOMBIAN DEPARTMENTS**

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Philip Morris Duty Free, Inc.

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Undersigned defendants submit this reply to the plaintiffs' opposition to defendants' objections to Magistrate Judge Viktor V. Pohorelsky's Decision and Order of February 2, 2001, denying defendants' application for an order, *inter alia*, requiring the Colombian Departments to produce their retainer agreements with plaintiffs' counsel. Defendants filed their objections on February 20, 2001. Plaintiffs responded with opposition papers filed on February 28, 2001.

Plaintiffs rest their opposition to disclosure of the retainer agreements on the erroneous claim that defendants' underlying motion for disqualification of counsel and dismissal of the complaint is a matter already decided. Stating this erroneous argument

several times, as they do in their opposition, does not make it true. (*See Memorandum of Law of the Departments of the Republic of Colombia in Opposition to Defendants' Objection to the Decision and Order of the Magistrate Judge Denying Defendants' Application for Discovery of All of the Retainer Agreements Between the Departments and Their Counsel at 2.*) The Magistrate Judge's report and recommendation on this matter is just that – a report and recommendation. The motion will remain unresolved until this Court rules on it. Furthermore, the motion may be a subject of review in the appellate courts. Thus, it is necessary to have a complete record, including all of the retainer agreements, to inform the Court.

Remarkably, plaintiffs fail to address the merits of defendants' objections.

Plaintiffs do not address the following substantive claims:

(1) The retainer agreements are necessary in order to determine whether the unethical provisions found in the Boyaca agreement appear in other agreements and thus, the extent to which the unethical provisions have pervaded the case and the importance of those provisions to inducing the filing of the Colombian lawsuit. Plaintiffs' inconsistent statements regarding the contents of the retainer agreements have heightened the need for the defendants and the Court to review all of the agreements in connection with the motion to disqualify and dismiss.

(2) The retainer agreements are not privileged, and plaintiffs' attorneys waived any privilege that they may claim existed when they voluntarily disclosed two retainer agreements and certain provisions of other agreements and when they made inconsistent statements about the contents of the retainer agreements, thereby putting them in issue.

(3) The retainer agreements disclosed to date contain provisions for filing the agreements with the court, thereby indicating their non-confidential nature.

CONCLUSION

For the reasons stated above, and as argued more fully in defendants' Objections filed February 20, 2001, the Court should enter an order requiring the Colombian plaintiffs to produce to the defendants copies of their retainer agreements with plaintiffs' counsel.

Dated: March 8, 2001

Respectfully submitted,

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